

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GLASSYBABY, LLC, a Washington  
limited liability company,

Plaintiff,

v.

PROVIDE GIFTS, INC. d/b/a RED  
ENVELOPE., a California corporation, and  
NORTHERN LIGHTS ENTERPRISES,  
INC., a New York corporation,

Defendants.

No. 2:11-cv-00380

FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF AND  
DAMAGES

**JURY TRIAL DEMANDED**

Plaintiff, for its FIRST AMENDED COMPLAINT against the defendants, hereby  
alleges as follows:

**THE PARTIES**

1. Plaintiff Glassybaby, LLC is a limited liability company organized under  
the laws of the state of Washington, with its principal place of business in Seattle, King  
County, Washington. Glassybaby is a maker and distributor of fine, distinctive, hand-  
blown glass containers used as, among other things, votive candle holders.

2. On information and belief, defendant Provide Gifts, Inc. d/b/a Red  
Envelope ("Red Envelope") is a corporation organized under the laws of the state of  
Delaware with its principle place of business in San Diego, California.

3. On information and belief, defendant Northern Lights Enterprises, Inc. d/b/a Northern Lights Candles (“Northern Lights”) is a corporation organized under the laws of the state of New York, with its principal place of business in Wellsville, New York.

### **JURISDICTION AND VENUE**

4. This Court has personal jurisdiction over defendant Red Envelope because, among other reasons, on information and belief, Red Envelope markets and distributes its goods—including goods that give rise to the claims asserted this action—to consumers in the state of Washington. On information and belief, Red Envelope purposely avails itself of the privileges of doing business in the state of Washington by, among other things, distributing printed catalogs to customers in Washington and taking online orders and payments from Washington residents via its website. Moreover, Red Envelope’s actions are causing harm in the state of Washington.

5. This Court has personal jurisdiction over defendant Northern Lights because, among other reasons, on information and belief, Northern Lights markets and distributes its goods—including goods that give rise to the claims asserted this action—to consumers in the state of Washington. On information and belief, Northern Lights purposely avails itself of the privileges of doing business in the state of Washington by, among other things, distributing printed catalogs to customers in Washington and taking online orders and payments from Washington residents via its website. Moreover, Northern Lights’ actions are causing harm in the state of Washington.

6. The Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338 and 28 U.S.C. § 1331, because one or more of the claims at issue arises under federal law—specifically, 15 U.S.C. §§ 1125(a) and (c).

7. Pursuant to 28 U.S.C. § 1367, the Court has supplemental jurisdiction over the state law claims at issue in this action because they are so related to the federal law

1 claims as to form part of the same case or controversy—*i.e.*, they arise out of a common  
 2 nucleus of operative facts. Moreover, subject matter jurisdiction over the state law claims  
 3 exists under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value  
 4 of \$75,000, exclusive of interest and costs, and involves citizens of different states.

5 8. Venue in this Court is proper under 28 U.S.C. § 1391(b) because, on  
 6 information and belief, the defendants reside in this District (*i.e.*, are subject to personal  
 7 jurisdiction here), and because a substantial part of the events giving rise to the claims  
 8 occurred here.

### 9 **FACTS**

10 9. The concept for Glassybaby was conceived in 1998 as its founder, Lee  
 11 Rhodes, was struggling to survive a rare form of lung cancer. Over the next few years,  
 12 Rhodes learned to blow glass and began selling her hand-made creations to others. After  
 13 seeing the strong, positive responses that others had to her product, she founded  
 14 Glassybaby and hired other glassblowers to help increase production and spread  
 15 Glassybaby to a broader market.

16 10. In 2003, Glassybaby opened its first retail store. Today, the Madrona  
 17 neighborhood of Seattle is home to the company's main store and studio, where a team of  
 18 dedicated glassblowers produces an average of 200 Glassybaby daily. Due to  
 19 overwhelming growth in demand, Glassybaby is in now the process of expanding its  
 20 Madrona glassblowing production facility. The company also has stores in Seattle's  
 21 University Village; in Bellevue, Washington; and in New York City's West Village  
 22 neighborhood at 555 Hudson St.

23 11. The distinctive design of Glassybaby hand-blown glass containers  
 24 constitutes a famous trademark that serves to distinguish Glassybaby from glass votive  
 25 holders made by other manufacturers. The mark consists of a three-dimensional  
 26 configuration of a round glass container that is approximately 3.75 inches tall, having

sides that curve convexly from the base to the rim, a maximum width of approximately 2.5 inches, a wide top opening, and a thick, clear base. This distinctive design is the product of an artisanal technique employed by Glassybaby's glassblowers to achieve a unique and recognizable aesthetic appeal. There are an infinite number of other designs, shapes, and sizes for glass containers made by other manufacturers that can serve the same functions as a Glassybaby (i.e., to hold candles, flowers, beverages, etc.), but consumers seek out and demand the genuine Glassybaby design because of its distinctive and aesthetically pleasing shape, size, and hand-crafted appearance. Consumers also know that, unlike other manufacturers of glass containers and candle holders, a significant portion of Glassybaby revenues goes to support worthy charitable causes.

12. The fame and distinctiveness of the Glassybaby design among the consuming public has been established by widespread coverage in print and television journalism, extensive marketing and promotion, and appearances on national broadcast television and radio programs. Glassybaby extensively promotes its glass container products and repeatedly and consistently displays close-up visual images of its distinctive design in promotional materials to ensure that consumers recognize the three-dimensional glass configuration as a source identifier.

13. Among the consuming public, the unique and distinctive design of Glassybaby glass containers has become recognizable as a mark of high-quality, exclusive, handmade glass. Moreover, because a portion of Glassybaby's revenue is donated to charitable organizations, members of the consuming public can be confident that by purchasing a genuine Glassybaby, not only are they acquiring a beautiful, handmade piece of glass, they are also providing financial assistance to worthy causes.

14. On information and belief, defendant Northern Lights is importing, marketing, and selling products referred as "Jeweltone votive holders," which are confusingly similar in appearance to Glassybaby's distinctive, protected design. On

1 information and belief, these products are imported by Northern Lights from one or more  
2 manufacturers in China.

3 15. On information and belief, Northern Lights sells these confusingly similar  
4 “Jeweltone votive holders” to Red Envelope and other possibly other consumers via its  
5 company catalogs and website. Northern Lights’ marketing and sale of these products to  
6 Red Envelope and other members of the public has the potential to mislead or confuse  
7 consumers regarding the source, sponsorship, or affiliation of these products—i.e., to  
8 mislead customers into believing they are purchasing genuine Glassybaby.

9 16. On information and belief, defendant Red Envelope resells Northern  
10 Lights’ products through the Red Envelope catalog and website, referring to them as  
11 “jewel tea light holders.” Red Envelope’s marketing and sale of these products to the  
12 public has the potential to mislead or confuse consumers regarding the source,  
13 sponsorship, or affiliation of these products—i.e., to mislead customers into believing they  
14 are purchasing genuine Glassybaby.

15 17. As a result of Northern Lights’ and Red Envelope’s actions, there is a  
16 likelihood that consumers are being or will be confused or misled into believing they are  
17 purchasing an authentic Glassybaby when, in fact, they are purchasing a cheaply made  
18 imitation that is imported by Northern Lights from China. Moreover, if their actions are  
19 not enjoined, Defendants’ actions are likely to diminish the ability of the Glassybaby  
20 design to continue to distinguish genuine Glassybaby products from those made and sold  
21 by others.

22 18. Defendants’ marketing and sale of these “Jeweltone votive holders” and/or  
23 “jewel tea light holders” (collectively, “Imitation Products”) is not authorized by  
24 Glassybaby. Images of the Imitation Products taken from defendants’ marketing materials  
25 are attached hereto as Exhibit A (Northern Lights) and B (Red Envelope). These images  
26 are merely illustrative of the Imitation Products; they are not intended to be a complete

1 collection of all infringing products or activities. As these images show, however, the  
 2 Imitation Products are confusingly similar in size, shape, proportion, curvature, and  
 3 overall appearances to the genuine Glassybaby design, from the wide top opening, right  
 4 down to the thick, clear base.

5 19. After becoming aware of Defendants marketing and sale of the Imitation  
 6 Products, Glassybaby wrote to both Red Envelope and Northern Lights to ask that they  
 7 cease marketing and selling the Imitation Products because they violate Glassybaby's  
 8 rights in the distinctive Glassybaby design and constitute unfair competition, under both  
 9 federal and state law.

10 20. Northern Lights has failed to comply with Glassybaby's request. The  
 11 Imitation Products remain available for sale through Northern Lights' websites and  
 12 catalogs. It now appears that the Imitation Products have been removed, at least  
 13 temporarily, from Red Envelope's website. But so long as they may be ordered from the  
 14 Red Envelope catalog (or might reappear for sale on the Red Envelope website) or may be  
 15 purchased directly from Northern Lights, the Imitation Products will continue causing  
 16 actual or potential confusion among the consuming public, as well as damage to  
 17 Glassybaby's goodwill. Unless Defendants are enjoined from continuing to market and  
 18 sell the Imitation Products, their actions will continue to dilute the distinctiveness of  
 19 Glassybaby's famous mark and cause irreparable damage to Glassybaby.

20 **COUNT I:**  
 21 **Infringement – 15 U.S.C. § 1125(a)**

22 21. Defendants' acts of importing, marketing, and/or selling the Imitation  
 23 Products violate the Lanham Act, 15 U.S.C. § 1125(a), by causing among the consuming  
 24 public a likelihood of confusion, mistake, or deception as to the affiliation, connection, or  
 25 association of the Imitation Products with those of Glassybaby.  
 26

22. Defendants' importing, marketing, and/or selling the Imitation Products further violates 15 U.S.C. § 1125(a) by causing among the consuming public a likelihood of confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants' Imitation Products by Glassybaby.

22. Defendants' acts of infringement in violation of 15 U.S.C. § 1125(a) have been willful and without regard for Glassybaby's rights. Unless enjoined, Defendants' actions will cause further and irreparable harm to Glassybaby.

**COUNT II:**  
**Dilution – 15 U.S.C. § 1125(c)**

23. Defendants' actions of importing, marketing, and/or selling the Imitation Products impairs or is likely to impair the distinctiveness of the Glassybaby design and thereby diminish its capacity to distinguish Glassybaby's glass votive holders from those of its competitors.

24. Further, Defendants' actions of importing, marketing, and/or selling the Imitation Products is tarnishing or is likely to tarnish the reputation of Glassybaby because the Imitation Products are of inferior quality and artistry to genuine Glassybaby and do not directly support the charitable causes that Glassybaby is widely known and celebrated for supporting.

25. As a result of these actions, Defendants are causing dilution or likelihood of dilution of Glassybaby's famous design mark, in violation of the Lanham Act, 15 U.S.C. § 1125(c). Unless enjoined, Defendants' actions will cause further and irreparable harm to Glassybaby.

26. Defendants' acts of dilution in violation of 15 U.S.C. § 1125(c) have been willful and without regard for Glassybaby's rights. Specifically, Defendants' conduct reflects their willful intent to trade on the famous Glassybaby mark and/or to harm the reputation of the Glassybaby mark.

**COUNT III:**  
**Trademark Dilution Under Washington Law RCW 19.77.160**

27. By the actions described above, Defendants actions are in violation of RCW 19.77.160. Defendants' importing, marketing, and selling the Imitation Products in Washington has caused dilution of Glassybaby's distinctive and famous product design. Unless enjoined, Defendants' actions, which reflect willful intent to trade on Glassybaby's reputation and fame, will continue to cause dilution to Glassybaby's famous mark and irreparable harm to Glassybaby's goodwill.

**COUNT IV:**  
**Unfair Competition Under RCW 19.86.020**

28. By the actions described above, Defendants have committed unfair or deceptive acts in trade or commerce. These actions affect the public interest by, among other things, causing or creating a likelihood of confusion regarding whether the Imitation Products are genuine Glassbaby. These actions, and the resulting likelihood of confusion and dilution of Glassybaby's mark, have proximately and in fact caused injury to Glassybaby's business or property, and will continue to cause injury unless enjoined.

29. Defendants have violated RCW 19.86.020 and are consequently liable to Glassybaby for the injuries resulting therefrom.

**PRAYER FOR RELIEF**

Glassybaby prays for entry of a judgment against Red Envelope and Northern Lights that provides as follows:

a. Enjoining Defendants from further importation, marketing, and sales of the Imitation Products or any other products that are confusingly similar in appearance to genuine Glassybaby glass votive holders, pursuant to 15 U.S.C. §§ 1116(a) and 1125(c)(5) and RCW 19.77.160(1) and 19.86.090;



b. Requiring Defendants to file with the Court and serve on Glassybaby a report in writing and under oath setting forth in detail the manner and form in which they have complied with the foregoing injunction, pursuant to 15 U.S.C. § 1116(a);

c. Awarding Glassybaby its actual damages, Defendants' profits, and the costs of bringing this action, pursuant to 15 U.S.C. §§ 1117(a) and RCW 19.77.160(2) and 19.86.090;

d. Trebling the award of Glassybaby's actual damages, pursuant to 15 U.S.C. § 1117(a) and RCW 19.77.160(2) and 19.86.090;

e. Awarding Glassybaby its reasonable attorney fees under 15 U.S.C. § 1117(a) and RCW 19.77.160(2) and 19.86.090;

f. Requiring Defendants, pursuant to 15 U.S.C. § 1118, to (i) destroy all Imitation Products—and any marketing or promotional materials that depict images of or contain offers to sell the Imitation Products—in their possession, custody, or control; and (ii) remove any depictions of or references to the Imitation Products from printed or online promotional or advertising materials in their possession, custody, or control; and

g. Awarding Glassybaby such other relief as the Court deems just and equitable.

### **JURY DEMAND**

Glassybaby demands trial by jury on all issues so triable.

Dated this 3rd day of July, 2011.

McNAUL EBEL NAWROT & HELGREN

By: /s/ David A. Linehan  
Robert M. Sulkin, WSBA No. 15425  
David A. Linehan, WSBA No. 34281

Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on July 3, 2011, I filed the foregoing First Amended Complaint for Injunctive Relief and Damages using the CM/ECF electronic filing system, which will deliver notice of this filing to all counsel of record.

s/ David A. Linehan

David A. Linehan

# EXHIBIT A

# Northern Lights Candles™

FRAGRANCED   UNFRAGRANCED   WHAT'S NEW   ACCESSORIES   VIEW BASKET

## VOTIVE HOLDERS

Jeweltone votive holders have a rounded, oval shape with a heavy clear bottom and rich color above. Measure 2.75" diameter at the widest point x 3" height.

[RETURN TO CATEGORY](#)



**Jeweltone**  
Color, Fragrance, Style or Size  
Sapphire  
Quantity

Price \$6.49

[ADD TO BASKET](#)

SUGGESTED ITEMS:



Basic Accessories - 12pc 6hr  
Tealight  
\$7.99



AromaZone - 12pc Sampler  
\$22.99



Nordica Fluted Candleholder -  
2.62" x 2.5" Votive Holder  
\$4.99



Fluted Votive Cup - Amber  
\$4.99



Amethyst  
\$6.49



Sapphire  
\$6.49



Topaz  
\$6.49

[CLEARANCE](#) | [GIFT CERTIFICATE](#) | [CONTACT US](#) | [ABOUT US](#) | [WHOLESALE](#) | [MAILING LIST](#)

[SEARCH](#) for Color, Fragrance or Size

# EXHIBIT B

christmas

occasion

for her

for him

jewelry

kids &amp; baby

for the home

specials

search

Keyword / Item #

go

gift guide

reminders

catalog quick order

Congratulations! Enter "SAVE10" during checkout and receive 10% off of today's order.



roll over image to zoom in

**gift description:**

Fabulous for year-round entertaining, our jewel-tone tea light holders cast a colorful glow anywhere you need it. Our set of three, hand-blown tea light holders come in a rounded, oval shape with a heavy clear bottom and rich color above.

- hand-blown glass
- colors: amethyst, sapphire and topaz
- 3 tea light candles included
- 3 1/4" high x 2 3/4" diameter

Item #30010408

**jewel tea light holders**

\$39.95

★★★★★

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[learn more](#)

quantity

1

[ordering more than 10?](#)

earliest possible

Fri, December 10 2010

arrival date

this gift includes

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